

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 13 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

APAGON INDUSTRIES, INC., an)	
Arizona corporation,)	2 CA-CV 2010-0168
)	DEPARTMENT A
Plaintiff/Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
KATHY MARTIN,)	Appellate Procedure
)	
Defendant/Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV20102874

Honorable Gilberto V. Figueroa, Judge

AFFIRMED

Cooper & Rueter, L.L.P.
By Paul D. Green

Casa Grande
Attorneys for Plaintiff/Appellee

Combs Law Group, P.C.
By Aaron M. Green and Adam D. Martinez

Phoenix
Attorneys for Defendant/Appellant

B R A M M E R, Presiding Judge.

¶1 Kathy Martin appeals from the trial court's judgment in favor of Apagon Industries, Inc. (Apagon) and against her for immediate possession of property subject to

Apagon's forcible detainer action. She argues the court erred in failing to allow her to present evidence at the forcible entry and detainer hearing that she was legal owner of the property and by finding forcible detainer. She also argues the court lacked subject matter jurisdiction under the Arizona Residential Landlord Tenant Act (ARLTA) and, thus, improperly found her "guilty of special detainer."¹ We affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to upholding the trial court's ruling." *Hammoudeh v. Jada*, 222 Ariz. 570, ¶ 2, 218 P.3d 1027, 1028 (App. 2009). In order to recover delinquent taxes levied and assessed against the subject property, the Pinal County Treasurer sold the property to Apagon, subject to Martin's statutory, three-year right to redeem. More than three years after the sale, Apagon filed an action to foreclose Martin's right to redeem. The court entered default judgment in favor of Apagon in February 2010, ordering a treasurer's deed to be executed and delivered to Apagon.

¶3 On July 1, 2010, a treasurer's deed was executed and recorded, transferring the property to Apagon.² On July 10, Apagon served Martin with a five-day notice to

¹Martin also alleges that, for the same reasons, the trial court erred in "denying her request for a jury trial." She does not offer additional argument in support of that claim; consequently we do not address it.

²Although the treasurer's deed was not in evidence before the trial court, we take judicial notice of the deed as it appears in the Pinal County Recorder's online records. *See* Ariz. R. Evid. 201 (court may take discretionary notice of fact not subject to reasonable dispute); *In re Sabino R.*, 198 Ariz. 424, ¶ 4, 10 P.3d 1211, 1212 (App. 2000) (appellate court may take judicial notice of anything of which trial court could take notice).

quit the property. On July 16, Apagon filed an action alleging it was entitled to immediate possession of the property and that Martin was in wrongful possession of the premises. Martin moved to vacate the forcible entry and detainer hearing and to reset the matter for a jury trial. The trial court denied Martin's motion and held a hearing on July 30. Taking judicial notice of the default judgment, the court found Martin "guilty of forcible detainer" and that Apagon was entitled to possession of the property, ordering Martin to surrender possession immediately. This appeal followed.

Discussion

Evidence of Title

¶4 Martin argues the trial court erred by not allowing her to present evidence at the forcible detainer hearing that she was the owner of the property, including "her warranty deed showing her as record legal owner." She contends such evidence may be considered at a forcible detainer hearing where it merely is incidental to proving an owner's right to possession. "[F]orcible entry and detainer is a statutory proceeding, the object of which is to provide a summary, speedy and adequate means for obtaining possession of premises by one entitled to actual possession." *Heywood v. Ziol*, 91 Ariz. 309, 311, 372 P.2d 200, 201 (1962). We review the interpretation and application of statutes de novo. *Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, ¶ 49, 180 P.3d 986, 1001 (App. 2008).

¶5 Section 12-1177(A), A.R.S., provides: "On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into." *See also Curtis v. Morris*, 186 Ariz. 534, 534,

925 P.2d 259, 259 (1996) (even where property sold, merits of title may not be tried in forcible detainer action). However, the fact of title ““may be proved as a matter incidental to showing right of possession by an owner.”” *Id.* at 535, 925 P.2d at 260, quoting *Andreola v. Ariz. Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (1976).

¶6 In this case, ownership of the property had been established conclusively prior to Apagon filing the action. The default judgment already had resolved the parties’ respective ownership rights, finding that Apagon was “the owner in fee of the property,” and that Martin had no claim to it other than her right to redeem, which the judgment foreclosed. Further, the judgment stated that Martin was “barred and forever estopped from having or claiming any right or title adverse to [Apagon].” *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 12, 158 P.3d 232, 237 (App. 2007) (final judgment on merits bars later action based on same claim). Martin already had been determined to have no remaining ownership interest, thus the trial court was correct to reject any evidence offered to dispute that determination. *See* § 12-1177(A); *Colonial Tri-City Ltd. P’ship v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 433, 880 P.2d 648, 653 (App. 1993) (forcible detainer action not appropriate when genuine dispute over “issue whose resolution is a *prerequisite* to determining which party is entitled to possession”).

¶7 Martin contends she did not attempt to argue the merits of title, but only that title remained in her name. To the extent she impliedly argues this evidence was relevant to whether “title ha[d] been duly transferred” as required in A.R.S. § 12-1173.01(A)(4), Martin was not prejudiced by the trial court’s refusal to consider such evidence. The default judgment had foreclosed any remaining interest she had in

the property, and the treasurer's deed transferring title to Apagon had been executed and recorded on July 1, 2010, prior to the filing of the forcible detainer action. Therefore, Martin had no entitlement to possession that she could have proven incidentally by evidence of title, and any error precluding such evidence was harmless. *See* Ariz. Const. art. VI, § 27 (“No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done.”); *Rimondi v. Briggs*, 124 Ariz. 561, 565, 606 P.2d 412, 416 (1980) (prejudice not presumed but must appear from record).

Finding of Forcible Detainer

¶8 Martin argues the trial court erred in finding her “guilty of forcible detainer.” Section 12-1173.01(A), A.R.S., provides in relevant part:

[A] person in any of the following cases who retains possession of any land, tenements or other real property after he receives written demand of possession may be removed through an action for forcible detainer filed with the clerk of the superior court in accordance with this article:

....

4. If the property has been sold by virtue of an execution and the title has been duly transferred.

¶9 Martin concedes the property had been sold and her right to redeem it had been foreclosed. However, she argues “the Pinal County Record[er]’s Office had not yet transferred title to the Property to Apagon,” and title had not been “duly transferred” as required by § 12-1173.01(A)(4). She does not support her argument with citations to the record or relevant authority, nor does she offer any explanation as to why the treasurer’s

deed, although recorded before the action was filed, would not have transferred title.³ Therefore, she has waived this argument on appeal and we do not address it further. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellate brief argument shall contain “citations to the authorities, statutes and parts of the record relied on”); *Polanco v. Indus. Comm’n of Ariz.*, 214 Ariz. 489, n.2, 154 P.3d 391, 394 n.2 (App. 2007) (appellant’s failure to develop and support argument waives issue on appeal).

¶10 Martin also asserts the trial court found her “guilty of special detainer.” Apagon’s complaint stated it was brought “pursuant to A.R.S. § 33-1377,” which is the section of ARLTA that provides for special detainer actions between landlords and tenants. However, as we explain below, the court did not make any finding of special detainer. To the extent Martin suggests any references in the complaint or judgment to the special detainer statute constituted reversible error, she has waived the argument by failing to raise it below. *See Maher v. Urman*, 211 Ariz. 543, ¶ 13, 124 P.3d 770, 775 (App. 2005) (argument not raised in trial court waived on appeal). Martin did not move to dismiss the complaint for failure to state a claim for forcible detainer, raised no concerns before or at the hearing about the proper statutory basis for the proceedings, and did not object to the proposed form of judgment. Additionally, Martin does not argue she has been prejudiced by the complaint’s citation to ARLTA, nor Apagon’s failure to cite

³At the forcible entry and detainer hearing, Martin suggested the deed may have included an improper legal description of the property; she does not make a similar argument on appeal. Although her statement of facts refers to the affidavit of her attorney, which states he verified her ownership through an online search and phone call to the Pinal County Treasurer’s Office, she does not discuss this assertion in her argument, nor does she cite to any part of the record to support it.

as specific support § 12-1173.01, and, as noted earlier, we will not reverse a ruling for technical error absent prejudice.⁴ *See* Ariz. Const. art. VI, § 27.

Subject Matter Jurisdiction

¶11 Martin argues the trial court “erred in finding [her] guilty of special detainer because it lacked subject matter jurisdiction under ARLTA.” Martin argues the court lacked jurisdiction over “Apagon’s special detainer action” because it was “brought under A.R.S. § 33-1377” and because she and Apagon never had a landlord and tenant relationship.

¶12 The ARLTA was passed to “simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant.” A.R.S. § 33-1302. Its remedies do not extend to cases not contemplated by the act, including where the parties do not meet the statutory definitions of landlord and tenant. *See Kadera v. Superior Court*, 187 Ariz. 557, 563, 931 P.2d 1067, 1073 (App. 1996) (cooperative corporation could not utilize ARLTA for special detainer where excluded by provisions and no landlord-tenant relationship). Section 33-1377(A) provides that special detainer actions “shall be instituted for remedies prescribed in [A.R.S.] § 33-1368,” which contemplates a tenant’s material noncompliance with a rental agreement or failure to pay rent to the landlord.

⁴Nor does prejudice appear from the record. The procedural rules for forcible detainer actions generally apply to actions for special detainer. § 33-1377(A). The record reveals Martin was aware of her procedural rights under the forcible detainer statutes; for example, she moved to vacate the hearing pursuant to A.R.S. § 12-1177 and requested a jury trial pursuant to A.R.S. § 12-1176.

¶13 In this case, however, the trial court had subject matter jurisdiction over what was effectively a forcible detainer action pursuant to § 12-1173.01. Although the complaint stated it was brought “pursuant to A.R.S. § 33-1377,” it was titled “forcible detainer”—language found in A.R.S. §§ 12-1171 through 12-1183, but not in ARLTA—rather than special detainer. At the July 30 hearing, the term “special detainer” was never used, Martin questioned neither the statutory basis of the action nor the court’s jurisdiction, and the transcript and minute entry were both titled “hearing on complaint for forcible entry and detainer.” Although the court’s order entering judgment in favor of Apagon noted the complaint had been brought pursuant to § 33-1377, the order was titled “forcible detainer.” Contrary to Martin’s suggestion, the court made no explicit finding regarding special detainer; it found, rather, that Martin was “guilty of forcible detainer.”

¶14 “[T]he phrase ‘subject matter jurisdiction’ refers to a court’s statutory or constitutional power to hear and determine a particular type of case.” *State v. Maldonado*, 223 Ariz. 309, ¶ 14, 223 P.3d 653, 655 (2010). Although forcible detainer originally applied only to landlord-tenant relationships, § 12-1173.01 “expanded the scope of the [forcible detainer] remedy to include transactions in which one holds over in possession after the property has been sold through foreclosure, trustee’s sale, forfeiture, execution, or other transactions where ‘the property has been sold by the owner and the title has been duly transferred.’” *Curtis*, 186 Ariz. at 535, 925 P.2d at 260, quoting § 12-1173.01(A)(5). In this case, a forcible detainer action was necessary and appropriate to allow Apagon to obtain immediate possession of the premises, *see* § 12-1173.01(A)(4), and the superior court was the proper court in which to bring it.

Ariz. Const. art. VI, § 14(5) (“The superior court shall have original jurisdiction of . . . [a]ctions of forcible entry and detainer.”). Therefore, the trial court did not lack subject matter jurisdiction to find forcible detainer and to order Martin to surrender possession of the property.

Disposition

¶15 For the foregoing reasons, we affirm the judgment in favor of Apagon. Both parties request an award of attorney fees and costs on appeal pursuant to A.R.S. §§ 12-1178, 12-341, and 12-341.01. We deny Martin’s request and grant Apagon reasonable attorney fees and costs pursuant to A.R.S. § 12-1178 upon its compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge